

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
EMMA J. TYSON, KIM G. TYSON and :
REGGIE G. TYSON, :
:
Plaintiffs, :
:
-against- : MEMORANDUM DECISION
:
3:01 CV 1917 (GLG)
:
MATTHEW WILLAUER, DWAYNE TAYLOR, :
SHANNON B. POLLOCK, RICHARD C. MULHALL, :
KEVIN SEARLES, JEFFREY W. RASEY, :
THOMAS BENNETT, TOWN OF BLOOMFIELD, :
TOWN OF WINDSOR, and UNITED STATES :
OF AMERICA, :
:
Defendants. :
:
:
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Defendant Jeffrey Rasey (hereinafter "Rasey") moves to dismiss [**Doc. #29**] Count One of the Complaint as to him. Count One alleges that defendants Willauer, Taylor, Pollick, Bennett and Rasey, acting under color of state law, unlawfully entered and searched plaintiffs' home in violation of the Fourth and Fourteenth Amendments of the United States Constitution. For the reasons set forth below, defendant Rasey's motion is GRANTED.

Standard of Review

In ruling on this motion to dismiss, the Court must accept as true all factual allegations of the complaint and must draw all reasonable inferences in favor of the plaintiff. Ganino v.

Citizens Utilities Co., 228 F.3d 154, 161 (2d Cir. 2000).

Dismissal is proper only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). However, while the pleading standard in federal court is a liberal one, bald assertions and conclusions of law will not suffice. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996); see also Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (holding that conclusory allegations as to the legal status of defendants' acts need not be accepted as true for purposes of ruling on a motion to dismiss); see generally 2 Moore's Federal Practice § 12.34[1][b] (3d ed. 2001).

Facts

The Court accepts as true the following facts for the purposes of defendant Rasey's motion to dismiss.

Plaintiffs Emma, Kim and Reggie Tyson live in Emma Tyson's home in Windsor, Connecticut. Compl. ¶¶ 1-3. Emma Tyson bought the home on June 22, 1999. Id. ¶ 13. A warranty deed was recorded in the Windsor Land Records on June 23, 1999. Id. ¶ 20.

Defendant Rasey is a Special Agent employed by the Federal Bureau of Investigation. Id. at ¶ 8. Defendants Willauer, Taylor, Pollick, and Bennett are state and local police officers employed by the towns of Bloomfield and Windsor and the State of Connecticut. Id. at ¶ 4-7.

On or about October 20, 1999, at approximately 5:57 a.m., plaintiffs were asleep in their beds when various defendants, including Rasey, attempted to execute a federal arrest warrant against a Dennis Rowe. Id. ¶ 15.

Defendants entered the Tyson household through the back and front entrances, allegedly with weapons drawn, carrying battering rams and shouting at plaintiffs to "get down." Id. ¶¶ 16, 17.

Defendants searched closets and other areas of plaintiffs' home. Id. ¶ 19. Plaintiffs showed the property deed to defendants to prove that plaintiff Emma Tyson owned the property and that Dennis Rowe did not reside there. Id. ¶ 20.

Plaintiff Emma Tyson suffered an asthma attack at the time of the search and medics were called to administer breathing treatments. Id. ¶ 25.

Defendants apparently stated that they had entered the wrong premises, and left without further explanation or apology. Id. ¶ 21. According to the Complaint, defendants did not conduct any follow-up investigation or inquiry. Id.

Plaintiffs assert that Dennis Rowe had not resided at the property for approximately four months prior to the execution of the arrest warrant at plaintiffs' home. Id. ¶ 22. Rowe was later arrested at another property in Windsor, Connecticut. Id.

Plaintiffs claim that neighbors witnessed defendants' attempts to execute the search warrant, and a newspaper apparently later reported that Dennis "Dicky" Rowe, residing at

plaintiffs' address, was arrested on drug charges. Id. ¶ 24.

Discussion

Counts One through Ten of the Complaint allege that defendant Rasey violated federal and state law. By order of this Court [**Doc. #34**], the United States has been substituted for Rasey on Counts Two through Nine, all of which allege violations of state law.¹ Count Ten contains a Bivens-type claim for relief against Rasey, alleging a violation of federal constitutional law.²

Plaintiffs allege in Count One that Rasey violated their civil rights and seek relief pursuant to 42 U.S.C. § 1983. As Rasey points out, however, federal officials or agents who act pursuant to federal law do not act under color of state law; instead, they act under color of federal law. Therefore, as a general rule, federal officials are not subject to suit under Section 1983. See, e.g., Kingsley v. Bureau of Prisons, 937 F.2d

¹ The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq., as amended by section 5 of the Westfall Act, provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the wrongful or negligent acts or omissions of federal employees taken within the scope of their office or employment. See 28 U.S.C. § 2679(b)(1). Upon certification by the Attorney General that a federal employee was acting within the scope of his office or employment at the time of the incident giving rise to a claim, any civil action arising out of that incident shall be deemed to be an action against the United States, and the United States shall be substituted as the sole defendant as to those claims. See 28 U.S.C. § 2679(d)(1).

² Defendant Rasey has not moved to dismiss Count Ten.

26, 30 n.4 (2d Cir. 1991) (an action brought pursuant to Section 1983 "cannot lie against federal officials"); Murray v. Department of Justice, 821 F. Supp.94, 100 (E.D.N.Y.), aff'd without opinion, 14 F.3d 591 (2d Cir. 1993); John's Insulation, Inc. v. Siska Const. Co., 774 F. Supp. 156, 161 (S.D.N.Y. 1991) (Section 1983 is not applicable to the actions of the federal government or its officials).

Some courts have found that federal officials have acted under color of state law, but only where there is evidence that they have played a significant role in a state program or have acted in concert or in conspiracy with state officials to violate a person's rights under the Constitution or federal law. See, e.g., Kletschka v. Driver, 411 F.2d 436, 449 (2d Cir. 1969) (the federal defendant acted under color of state law because it was a joint participant in the challenged activity where the state had insinuated itself into a position of interdependence with the federal defendant); Hindes v. F.D.I.C., 137 F.3d 148, 158 (3d Cir. 1998) (federal officials are subject to Section 1983 liability where they have acted "under color of state law, for example in conspiracy with state officials"); Strickland v. Shalala, 123 F.3d 863, 867 (6th Cir. 1997) (a federal official has acted under color of state law only when there is evidence that federal and state officials engaged in a conspiracy or "symbiotic" venture to violate a person's rights under the Constitution or federal law); Andujar v. Weinberger, 69 F.R.D.

690, 695 (S.D.N.Y. 1976) (federal officials played a "significant role" in a state program); Lyons v. Weinberger, 376 F. Supp. 248, 254 (S.D.N.Y. 1974) (the state or its officials were "significantly involved" in a federal program).

To transform Rasey into a state actor for the purposes of their Section 1983 claim against him, plaintiffs must show that there was a symbiotic relationship between Rasey and the state defendants such that the challenged action may fairly be attributed to the state. Plaintiffs argue that a general allegation of a conspiracy between Rasey and the state defendants is sufficient to withstand a motion to dismiss. See Kletschka, 411 F.2d at 449. However, the Second Circuit recently stated that a complaint "'containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss.'" Brown v. City of Oneonta, 106 F.3d 1125, 1133 (2d Cir. 1997) (quoting Summer v. Dixon, 709 F.2d 173, 175 (2d Cir. 1983)). In this case, plaintiffs do not state facts alleging a symbiotic relationship,³ nor do they make more than a vague, general allegation that Rasey conspired with the state defendants. Therefore, plaintiffs have failed to state a claim upon which relief may be granted under Section 1983. Accordingly, Count One as to defendant Rasey is

³ The only overt act taken by Rasey with the assistance of the state defendants was his attempt execute a federal arrest warrant.

dismissed.

Conclusion

For the reasons set forth above, defendant Rasey's motion to dismiss **[Doc. #29]** Count One is GRANTED as to him.

SO ORDERED.

Dated: May 28, 2002
Waterbury, CT

_____/s/_____
Gerard L. Goettel
United States District Judge